

House File 520 - Introduced

HOUSE FILE 520

BY DUNKEL

A BILL FOR

1 An Act relating to real property by abolishing dower and
2 curtesy, modifying the elective share of a surviving spouse,
3 and eliminating the surviving spouse's statutory share of
4 the homestead.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.82, subsection 1, Code 2015, is
2 amended to read as follows:

3 1. ~~Notwithstanding section 561.15, if~~ If it is alleged by
4 a person authorized to file a petition under section 232.87,
5 subsection 2, or by the court on its own motion, that a parent,
6 guardian, custodian, or an adult member of the household in
7 which a child resides has committed a sexual offense with or
8 against the child, pursuant to chapter 709 or section 726.2,
9 or a physical abuse as defined by section 232.2, subsection
10 42, the juvenile court may enter an ex parte order requiring
11 the alleged sexual offender or physical abuser to vacate the
12 child's residence upon a showing that probable cause exists to
13 believe that the sexual offense or physical abuse has occurred
14 and that substantial evidence exists to believe that the
15 presence of the alleged sexual offender or physical abuser in
16 the child's residence presents a danger to the child's life or
17 physical, emotional, or mental health.

18 Sec. 2. NEW SECTION. 558.73 **Dower and curtesy abolished.**

19 Dower and curtesy are abolished in this state.

20 Sec. 3. Section 561.11, Code 2015, is amended to read as
21 follows:

22 **561.11 Occupancy by surviving spouse.**

23 Upon the death of either spouse, the survivor may continue to
24 possess and occupy the whole homestead until it is otherwise
25 disposed of according to law, ~~but the setting off of the~~
26 ~~distributive share of the survivor in the real estate of the~~
27 ~~deceased shall be such a disposal of the homestead as is herein~~
28 ~~contemplated.~~

29 Sec. 4. Section 561.13, Code 2015, is amended by striking
30 the section and inserting in lieu thereof the following:

31 **561.13 Conveyance or encumbrance.**

32 A conveyance or encumbrance of, or contract to convey or
33 encumber the homestead, if the owner is married, is valid, even
34 if the spouse of the owner who is not a titleholder of the
35 homestead does not execute the same or a like instrument, or

1 a power of attorney for the execution of the same or a like
2 instrument.

3 Sec. 5. Section 597.5, Code 2015, is amended to read as
4 follows:

5 **597.5 Attorney in fact.**

6 A husband or wife may constitute the other spouse as the
7 husband's or wife's attorney in fact, to control and dispose of
8 the husband's or wife's property, ~~including the relinquishment~~
9 ~~of homestead rights and surviving spouse's statutory share in~~
10 ~~the homestead, as provided in section 561.13,~~ for their mutual
11 benefit, and may revoke the appointment, the same as other
12 persons.

13 Sec. 6. Section 598.33, Code 2015, is amended to read as
14 follows:

15 **598.33 Order to vacate.**

16 ~~Notwithstanding section 561.15, the~~ The court may order
17 either party to vacate the homestead pending entry of a decree
18 of dissolution upon a showing that the other party or the
19 children are in imminent danger of physical harm if the order
20 is not issued.

21 Sec. 7. Section 614.14, subsection 1, Code 2015, is amended
22 to read as follows:

23 1. If an interest in real estate is held of record by a
24 trustee, a bona fide purchaser acquires all rights in the real
25 estate which the trustee and the beneficiary of the trust had
26 and any rights of persons claiming by, through, or under them,
27 free of any adverse claim ~~including but not limited to claims~~
28 ~~arising under section 561.13 or claims relating to an interest~~
29 ~~in real estate arising under section 633.238.~~

30 Sec. 8. Section 614.15, subsection 2, Code 2015, is amended
31 to read as follows:

32 2. In all cases where the holder of the legal or equitable
33 title or estate to real estate situated within this state,
34 after July 1, 1981, conveyed the real estate or any interest
35 in the real estate by deed, mortgage, or other instrument, and

1 the spouse failed to join in the conveyance, the spouse or the
 2 heirs at law, personal representative, devisees, grantees,
 3 or assignees of the spouse are barred from recovery unless
 4 suit is brought for recovery within ten years from the date
 5 of the conveyance. ~~However, in the case where the right to~~
 6 ~~the distributive share has not accrued by the death of the~~
 7 ~~spouse executing the instrument, then the party not joining~~
 8 ~~is authorized to file in the recorder's office in the county~~
 9 ~~where the land is situated, a notice with affidavit setting~~
 10 ~~forth the affiant's claim, together with the facts upon which~~
 11 ~~the claim is based, and the residence of the claimants. If~~
 12 ~~the notice is not filed within ten years from the date of the~~
 13 ~~execution of the instrument the claim is barred forever. Any~~
 14 ~~action contemplated in this section may include land situated~~
 15 ~~in different counties by giving notice as provided in section~~
 16 ~~617.13. The effect of filing the notice with affidavit shall~~
 17 ~~extend for a further period of ten years the time within which~~
 18 ~~the action may be brought. Successive notices may be filed~~
 19 ~~extending this period.~~

20 Sec. 9. Section 633.238, subsection 1, paragraph a, Code
 21 2015, is amended by striking the paragraph.

22 Sec. 10. Section 633.238, subsection 1, paragraph d, Code
 23 2015, is amended to read as follows:

24 *d.* One-third in value of the personal property held in trust
 25 not necessary for the payment of debts and charges over which
 26 the decedent was a grantor and retained at the time of death
 27 the power to alter, amend, or revoke the trust, or over which
 28 the decedent waived or rescinded any such power within one year
 29 of the date of death, and to which the surviving spouse has not
 30 made any express written relinquishment.

31 Sec. 11. Section 633.242, Code 2015, is amended to read as
 32 follows:

33 **633.242 Rights of election personal to surviving spouse.**

34 The right of the surviving spouse to take an elective
 35 share, ~~and the right of the surviving spouse to receive a life~~

1 ~~estate in the homestead, are~~ is personal, ~~— They are~~ is not
2 transferable, and cannot be exercised for the spouse subsequent
3 to the spouse's death. If the surviving spouse dies prior to
4 filing an election, it shall be conclusively presumed that the
5 surviving spouse does not take such elective share.

6 Sec. 12. Section 633.243, Code 2015, is amended to read as
7 follows:

8 **633.243 Filing elections.**

9 The filing of the elective share ~~and the election to receive~~
10 ~~a life estate in the homestead~~ shall be filed in the office of
11 the clerk in which the decedent's estate is being administered
12 and served on the trustee of the revocable trust. The court
13 where the election is filed shall have exclusive jurisdiction
14 over all matters regarding elections under this chapter.

15 Sec. 13. Section 633.244, Code 2015, is amended to read as
16 follows:

17 **633.244 Incompetent spouse — election by court.**

18 In case an affidavit is filed that the surviving spouse is
19 incapable of determining whether to take the elective share,
20 ~~or to elect to receive a life estate in the homestead,~~ and
21 does not have a conservator, the court shall fix a time and
22 place of hearing on the matter and cause a notice thereof to
23 be served upon the surviving spouse in such manner and for
24 such time as the court may direct. At the hearing, a guardian
25 ad litem shall be appointed to represent the spouse and the
26 court shall enter such orders as it deems appropriate under the
27 circumstances. The guardian ad litem shall be a practicing
28 attorney.

29 Sec. 14. Section 633.245, Code 2015, is amended to read as
30 follows:

31 **633.245 Record of election.**

32 The elections of the surviving spouse under section 633.236,
33 ~~633.240~~ or 633.244 shall be entered on the proper records of
34 the court.

35 Sec. 15. Section 633.246, subsection 1, Code 2015, is

1 amended to read as follows:

2 1. An election by or on behalf of a surviving spouse to
3 take the share provided in section 633.211, 633.212, 633.236,
4 633.238, ~~633.240~~, or 633.244 shall be binding and shall not be
5 subject to change except for such causes as would justify an
6 equitable decree for the rescission of a deed.

7 Sec. 16. Section 633.647, subsection 6, Code 2015, is
8 amended to read as follows:

9 6. To make an election for the ward who is a surviving
10 spouse as provided in sections 633.236 and ~~633.240~~ 633.238.

11 Sec. 17. REPEAL. Sections 561.12, 561.15, 633.239,
12 633.240, 633.241, 633.249, and 633.516, Code 2015, are
13 repealed.

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with
16 the explanation's substance by the members of the general assembly.

17 This bill abolishes dower and curtesy, modifies the elective
18 share of a surviving spouse, and eliminates the surviving
19 spouse's statutory share of the homestead.

20 Dower and curtesy are common law rights relating to a
21 surviving spouse's property rights in the property of the
22 deceased spouse. The bill explicitly abolishes dower and
23 curtesy in this state.

24 Current law provides that even if a married person's spouse
25 is not a titleholder of the homestead, the married person
26 cannot convey or encumber the homestead unless the married
27 person's spouse executes an instrument conveying or encumbering
28 the same interest in the homestead. The bill provides that
29 if a married person's spouse is not a titleholder of the
30 homestead, the married person may convey or encumber the
31 homestead without the married person's nontitleholder spouse
32 executing an instrument conveying or encumbering the same
33 interest in the homestead.

34 Code section 561.15 provides that neither spouse can remove
35 the other nor the children from the homestead without the

1 consent of the other. The bill repeals Code section 561.15.

2 Current law allows a surviving spouse to elect, in lieu
3 of any property the spouse would otherwise receive under the
4 last will and testament of the deceased spouse, one-third in
5 value of all the legal or equitable estates in real property
6 possessed by the decedent at any time during the marriage which
7 have not been sold on execution or other judicial sale, as well
8 as personal property exempt from execution, one-third of all
9 personal property not necessary for the payment of debts and
10 charges, and one-third in value of the property held in trust
11 not necessary for the payment of debts and charges. The bill
12 provides that real estate possessed by the deceased spouse
13 during the marriage is not subject to the elective share.
14 The bill further provides that the one-third in value of the
15 property held in trust only applies to personal property, not
16 real property.

17 Current Code sections 561.12 and 633.240 provide that a
18 surviving spouse may, in lieu of electing a share of the real
19 property possessed by the decedent at any time of the marriage,
20 elect to receive a life estate in the homestead. The bill
21 repeals Code sections 561.12 and 633.240.

22 The bill makes conforming changes.